UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Eric Ali, Plaintiff, - against - Court Officer T. Eleazar Ramos Shield No. 7217, and Court Officer John Doe 1, Defendants.	16-cv-01994 (ALC)

MEMORANDUM OF LAW IN SUPPORT OF COURT OFFICER RAMOS' MOTION TO DISMISS THE SECOND AMENDED COMPLAINT

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Preliminary Statement

Plaintiff Eric Ali brings this action against New York State Court Officers T. Eleazar Ramos (hereinafter Officer Ramos or "State Defendant") and John Doe 1. Ali asserts four claims pursuant to 42 U.S.C. § 1983, that: (1) the defendants caused Ali unnecessary pain and suffering due to their deliberate indifference to his medical needs; (2) the defendants subjected Ali to excessive force; (3) the defendants conspired against Ali; and (4) Court Officer John Doe 1 failed to intervene on Ali's behalf. Ali's claims arise from a single incident in July 2015 when he appeared before the New York State Supreme Court, New York County, Criminal Term, in an unrelated criminal matter. Ali seeks an unspecified amount of compensatory and punitive damages as well as fees and costs.

This memorandum of law is respectfully submitted on behalf of Officer T. Eleazar Ramos in support of his motion to dismiss the complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As demonstrated below, Ali's claims are substantively flawed and require dismissal for failure to state a viable claim for relief. Accordingly, the State Defendant's motion should be granted and the complaint should be dismissed, with prejudice, in its entirety.[1]

Statement of the Facts

For purposes of a motion to dismiss only, the well-pleaded facts of the complaint should be considered. The Court may also take judicial notice of the documents attached to the Declaration of Michael J. Siudzinski ("Siudzinski Decl."), dated April 24, 2017, which include submissions from Ali's Court of Claims action, *Ali v. State of New York*, Claim No. 126811; documents that are incorporated in the complaint by reference; documents in Ali's possession;

[1] Although this motion is not made on behalf of Court Officer John Doe 1, to the extent the Court dismisses the claims against Officer Ramos, the claims arguably should be dismissed against Officer Doe 1 as well, including Ali's claim for failure to intervene, which relies on a finding that a constitutional violation has occurred. *See, e.g., S.B. v. City of New York*, 2016 WL 4530455, at *16 ("Plaintiffs' failure to intervene claims fail in the absence of an adequately pled underlying constitutional violation." (citing *Taveres v. City of New York*, 2010 WL 234974, at *4 (S.D.N.Y. Jan. 19, 2010)).

and documents of which Ali has knowledge and upon which he relied upon in bringing this action. *See Chambers v. Time Warner, Inc.*, 282 F.3d 147, 153 (2d Cir. 2002).

Background

On July 21, 2015, Ali appeared at the New York State Supreme Court, New York County, Criminal Term, before Justice Charles H. Solomon on a then-pending criminal matter. *See* Second Am. Compl., Mar. 24, 2017, ECF No. 38., ¶ 10. According to Ali, he "loudly voiced his concerns about his case" to Justice Solomon, creating a "boisterous" appearance. *Id.* Officers "Ramos and/or John Doe" then "handcuffed the plaintiff unnecessarily and excessively tight." *Id.*

Thereafter Ali started to experience numbness and tingling in his left wrist. *Id.* ¶ 11. The defendants then, in attempting to open the handcuffs, "broke the key in the lock to the handcuff thereby extending the period of time that plaintiff" was in pain. *Id.* The New York City Fire Department was called and, upon arrival, successfully removed Ali's handcuffs. *Id.* Ali alleges that he sustained "permanent injury and continues to suffer from the loss of use of his hand." *Id.*

Ali's New York State Court of Claims Action

On September 24, 2015, Ali commenced an action in the New York State Court of Claims against the State of New York and the New York State Department of Corrections for the same incident that is the basis of the claims asserted here. *See* Siudzinski Decl., Ex. A. By Decision and Order, dated April 6, 2016, the Court of Claims dismissed the action on procedural grounds. *See* Siudzinski Decl., Ex. B.

Federal Action

Ali filed a complaint commencing this action on March 17, 2016, alleging claims under 42 U.S.C. §§ 1983 and 1985 against Anthony Annucci, Acting Commissioner of New York State Department of Corrections and Community Supervision, and "Correction Officer T. Eleazar Ramos." On June 16, 2016, Ali filed his First Amended Complaint removing Anthony Annucci as a defendant, adding Judge Lawrence K. Marks, the Chief Administrative Judge of the New York State Courts, and Court Officer John Doe 1 as defendants, and correctly identifying defendant T. Eleazar Ramos as a New York State Court Officer.

On March 24, 2017, with permission of the Court, Ali filed his Second Amended Complaint, removing Judge Marks as a defendant and adding claims of excessive force and failure to intervene. *See* Second Am. Compl.

Standards of Review

Rule 12(b)(1)

Under Fed. R. Civ. P. 12(b)(1), a complaint "is properly dismissed for lack of subject matter jurisdiction . . . when the district court lacks the statutory or constitutional power to adjudicate it." *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000). A plaintiff opposing a Rule 12(b)(1) motion "has the burden of proving by a preponderance of the evidence that it exists." *Id.* "[J]urisdiction must be shown affirmatively, and that showing is not made by drawing from the pleadings inferences favorable to the party asserting it." *APWU v. Potter*, 343 F.3d 619, 623 (2d Cir. 2003). In evaluating jurisdictional issues, the court may also properly consider matters outside the pleadings, including state and federal law. *See Morrison v. Nat'l Austl. Bank Ltd.*, 547 F.3d 167, 170 (2d Cir. 2008), *aff'd*, 561 U.S. 247 (2010).

Rule 12(b)(6)

"To survive a motion to dismiss [under Fed. R. Civ. P. 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 [2007]). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* A complaint that merely alleges facts that are "consistent with" or "compatible with" liability fails to state a cognizable claim. *See Iqbal*, 556 U.S. at 669; *Twombly*, 550 U.S. at 557.

In considering the legal sufficiency of a complaint, the Court should accept its well-pled factual allegations as true. However, the Court is not required to accept as true "legal conclusions" or "threadbare recitals of the elements of a cause of action, supported by mere conclusory statements." *Harris v. Mills*, 572 F.3d 66, 72 (2d Cir. 2009) (quotations omitted). "Determining whether a complaint states a plausible claim for relief will . . . be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679 (citation omitted).

ARGUMENT

I. The complaint does not contain sufficient factual allegations to state a plausible claim upon which relief can be granted.

A. Ali's conspiracy claim is barred by the intracorporate conspiracy doctrine.

Ali's complaint fails to state a conspiracy claim pursuant to 42 U.S.C. § 1983.[2] To assert a claim under section 1983 and to avoid dismissal, the plaintiff must show: (1) an agreement between two or more state actors; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages. *See Pangburn v. Culbertson*, 200 F.3d 65, 72 (2d Cir. 1999). Where, however, the alleged conspirators are officers, agents, and employees of a single entity, such individuals are legally incapable of conspiring together and the claims are barred by the intracorporate conspiracy doctrine. *See Chamberlain v. City of*

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[2] In the First Amended Complaint, Ali's claim for conspiracy was made pursuant to 42 U.S.C. § 1985. By Ali's letter to the Court, dated March 21, 2017, in which he requested leave to file the Second Amended Complaint, Ali indicated that he intended to pursue his claim of conspiracy pursuant to 42 U.S.C. § 1983. Accordingly, State Defendant has addressed Ali's conspiracy claim pursuant to section 1983. To the extent Ali intends to make his claim pursuant to section 1985, the claim fails because there is no allegation that the defendants acted with racial or other class-based discriminatory animus in order to deprive Ali of a constitutional or other federal right. *See LeBlanc-Sternberg v. Fletcher*, 67 F.3d 412, 426-27 (2d Cir. 1995).

White Plains, 986 F.Supp.2d 363, 388 (S.D.N.Y. 2004) (citing *Harline v. Gallo*, 546 F.3d 95, 99 n.3 (2d Cir. 2008). The intracorporate conspiracy doctrine applies equally to conspiracy claims brought pursuant to 42 U.S.C. §§ 1983 and 1985. *See Chamberlain*, 986 F.Supp.2d at 388 (collecting cases). Claims against individuals alleged to be acting within the scope of their employment are more likely to be barred. *See id.* Officer Ramos and Officer Doe are both employees of the New York State Office of Court Administration and Ali alleges that they were acting within the scope of their employment. *See* Second Am. Compl. ¶¶ 6–7.

There is a limited exception to the doctrine when the individuals are pursuing personal interests wholly separate and apart from the employer, but an allegation of an improper motive does not trigger the exception. *See Chamberlain*, 986 F.Supp.2d at 388. There is no dispute that, as court officers and employees of the New York State Office of Court Administration, Officers Ramos and Doe are responsible for the security of the New York State Supreme Court, New York County courthouse. Furthermore, there is no genuine dispute that included in a court officer's duties are courtroom security and supervising and moving inmates between courtrooms and holding cells within the courthouse. Given that the alleged incident took place while defendants were responsible for moving plaintiff from a courtroom to a holding cell, there can be no legitimate argument that defendants were pursuing personal interests. Accordingly, Ali's claim for conspiracy is barred by the intracorporate conspiracy doctrine and should be dismissed.

Even assuming, *arguendo*, that Ali's conspiracy claim is not barred by the intracorporate conspiracy doctrine, the claim should be dismissed for failure to plead with sufficient specificity. Vague and conclusory allegations that defendants entered into an unlawful agreement will not suffice to state a conspiracy claim under either section 1983 or 1985. *See Kiryas Joel Alliance v. Vill. of Kiryas Joel*, 495 Fed. App'x 183, 190-91 (2d Cir. 2012); *see also Webb v. Goord*, 240 F.3d 105, 110-11 (2d Cir. 2003) ("[A] plaintiff must provide some factual basis supporting a meeting of the minds, such that defendants entered into an agreement, express or tacit, to achieve the unlawful end.”). Here, Ali fails to plead any allegation showing an agreement between the defendants to deprive him of his constitutional rights. Ali has no basis for his allegation that the defendants conspired against him. Ali alludes to, but does not allege, that the defendants intended to harm him due to his “boisterous appearance” before Justice Solomon. *See* Second Am. Compl. ¶ 10. Justice Solomon is not a defendant here and Ali does not allege that Justice Solomon or any other employee of the New York State Unified Court System directed the defendants to harm him. Ali’s failure to sufficiently allege a conspiracy requires dismissal for failure to state a claim.

B. Ali has failed to state a claim of deliberate indifference to safety and medical needs.

Ali asserts a claim alleging that the defendants violated his rights under the Fourteenth Amendment through deliberate indifference to his safety and medical needs. *See* Second Am. Compl. ¶¶ 12–15. Specifically, Ali alleges that he was handcuffed “unnecessarily and excessively tight in order to administer pain upon [him] and punish him for” being loud during a court appearance before Judge Solomon. *See id.* ¶ 10. Ali further alleges that the defendants “broke the key in the lock of the handcuff thereby extending the period of time that [he] was left in a state of extreme discomfort and loss of feeling in his arm.” *Id.*

To establish a claim for deliberate indifference under the Due Process Clause of the Fourteenth Amendment, a plaintiff must allege “acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Estelle v. Gamble,* 429 U.S. 97, 106 (1976). To do so, Ali must plead facts that satisfy two prongs: an “objective prong” showing that the alleged deprivation of medical care is “sufficiently serious to constitute objective deprivations of the right to due process,” and a “mental element prong” showing that the defendants “acted intentionally to impose the alleged condition, or recklessly failed … to mitigate the risk that the condition" imposed. *See Darnell v. Pineiro*, 2017 WL 676521, at *14 (2d Cir. Feb. 21, 2017); *see also Perez v. City of N.Y.*, 2009 WL 1616374, at *8 (S.D.N.Y. June 8, 2009) ("A custodian of a non-convicted detainee may be found liable for violating the detainee's due process rights if the official denied treatment needed to remedy a serious medical condition and did so because of deliberate indifference to the medical need." (quoting *Esmont v. City of N.Y.*, 371 F. Supp. 2d 202, 218 (E.D.N.Y. 2015)).

Under the "objective prong," the alleged deprivation must be 'sufficiently serious,' in the sense that 'a condition of urgency, one that may produce death, degeneration, or extreme pain' exists." *Hathaway v. Coughlin*, 99 F.3d 550, 553 (2d Cir. 1996); *accord Jones v. Vives*, F. App'x 48, 49 (2nd Cir. 2013). Where there is an alleged "delay … in the provision of otherwise adequate treatment," courts also focus on the seriousness of the delay "in analyzing whether the alleged deprivation is, in 'objective terms, sufficiently serious,' to support a claim. *Smith v. Carpenter*, 316 F.3d 178, 185 (2d Cir. 2003) (quoting *Chance v. Armstrong*, 143 F.3d 698, 702 (2d Cir. 1998)). "Factors relevant to the seriousness of a medical condition include whether 'a reasonable doctor or patient would find [it] important and worthy of comment,' whether the condition 'significantly affects an individual's daily activities,' and whether it causes 'chronic and substantial pain.'" *Rivera v. Bloomberg*, 2012 WL 3655830, at *7 (S.D.N.Y. Aug. 27, 2012) (quoting *Salahuddin v. Goord*, 467 F.3d 263, 279 (2d Cir. 2006)).

Here, Ali's allegations – that he experienced "significant numbness and tingling in his left wrist" and was in a "state of extreme discomfort and loss of feeling in his arm" – fail to meet this constitutional threshold of a sufficiently objective serious medical need.[3] And while Ali alleges that the numbness and tingling he experienced caused him "permanent injury," and that he "continues to suffer from loss of use of his hand as a result of the actions of the defendants," these allegations are not enough to state a viable constitutional claim. *See, e.g.*, *Harris*, 2016 WL 3023265, at *10–11 (the plaintiff's allegations of suffering from "handcuff syndrome" is insufficient to state a claim because, among other things, he fails to "explain what handcuff syndrome is or what specific injuries he suffered as a result."); *Lozada v. City of N.Y.*, 2013 WL 3934998, at *5 (E.D.N.Y. July 29, 2013) (granting motion to dismiss excessive force claim because the plaintiff's "vague reference to 'injuries'" and a "complaint of a swelled wrist [were] insufficient").

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[3] *See Mikulec v. Town of Cheektowaga*, 909 F. Supp. 2d 214, 223 (W.D.N.Y. 2012) (holding that the plaintiff's allegations of being in "a great degree of discomfort," suffering "abrasions on his wrists," having "his complaints about wrist pain" ignored by the defendants, and seeking "treatment for these injuries at a hospital" were insufficient to support a claim of deliberate indifference to medical needs); *Perez v. City of N.Y.*, 2009 WL 1616374, at *9 (S.D.N.Y. June 8, 2009) (dismissing deliberate indifference claim where the plaintiff "alleges he was kept in an 'awkward and painful position' with his

Under the "mental element prong," Ali must also allege facts demonstrating "that the defendant-official acted intentionally to impose the alleged condition, or recklessly failed to act with reasonable care to mitigate the risk that the condition posed … even though the defendant-official knew, or should have known, that the condition posed an excessive risk to health or safety."[4] *Darnell v. Pineiro*, 2017 WL 676521, at *14 (2d Cir. Feb. 21, 2017). Here, Ali fails to plead facts satisfying this *mens rea* requirement. Nothing in the operative complaint gives rise to a plausible inference that Officer Ramos intentionally handcuffed Ali in an excessively tight

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right arm raised above his head, for approximately thirteen hours…"); *Evering v. Rielly*, 2001 WL 1150318, at *9 (S.D.N.Y. Sept. 28, 2001) ("Unlike the excessive force standard, deliberate indifference requires injuries that demonstrate urgency leading to death, degeneration or extreme pain."); *Bonner v. N.Y. City Police Dep't*, 2000 WL 1171150, at *4 (S.D.N.Y. Aug. 17, 2000) (holding that the inability to close hand due to swelling is insufficiently serious to constitute deliberate indifference).

[4] The Second Circuit recently held that the subjective-intent requirement for deliberate-indifference claims under the Eighth Amendment no longer applies to deliberate-indifference claims brought under the Fourteenth Amendment. *See Darnell v. Pineiro*, 2017 WL 676521 (2d Cir. Feb. 21, 2017). Interpreting the Supreme Court's decision in *Kingsley v. Hendrickson*, — U.S. —, 135 S. Ct. 2466 (2015), the Second Circuit concluded that the objective analysis that applies to excessive-force claims under the Fourteenth Amendment should apply with equal force to deliberate-indifference claims. *Id.* Although *Darnell* involved deliberate-indifference claims in the context of conditions of confinement, the Second Circuit has long recognized that "deliberate indifference means the same thing for each type of claim under the Fourteenth Amendment." *Id.* at *12 n.9. Thus, the newly articulated objective standard for deliberate-indifference claims set forth in *Darnell* applies here.

manner to hurt him or ignored his "protestations" of discomfort. If anything, the allegations demonstrate the opposite: Ali alleges that after he "started to experience significant numbness and tingling in his left wrist" and made "continued protestations in regards to the pain and discomfort being experienced," the defendants "allegedly attempt[ed] to open the handcuffs," and "broke the key in the lock of the handcuff." *See* Second Am. Compl. ¶¶ 10–11. Ali further alleges that the New York City Fire Department was called to assist in removing the jammed handcuff. *See id.* This narrative runs directly counter to any suggestion that the defendants "recklessly failed to act with reasonable care to mitigate the risk that the condition imposed." *Darnell*, 2017 WL 676521 at *14. Moreover, any insinuation that the defendants intentionally broke the key in the lock of Ali's handcuffs to prolong the time he "was left in a state of extreme discomfort" is simply too facially implausible to survive a Rule 12(b)(6) motion to dismiss under *Iqbal* and *Twombly*.

Drawing all reasonable inferences in Ali's favor, the allegations contained in the complaint amount, at most, to "mere negligence." *Darnell*, 2017 WL 676521 at *14. Negligence falls far short of the showing needed to establish a constitutional violation under section 1983. *Id.* at *15. ("[A]ny § 1983 claim for a violation of due process requires proof of a *mens rea* greater than mere negligence." (citations omitted)); *Kingsley*, 135 S. Ct. at 2472 ("[L]iability for *negligently* inflicted harm is categorically beneath the threshold of constitutional due process.")). The Second Circuit makes clear in *Darnell* that "[a] detainee must prove that an official acted intentionally or recklessly, and not merely negligently." 2017 WL 676521, at *14; *see also Farmer v. Brennan*, 511 U.S. 825, 835 (1994) (holding that the reckless or intentional action (or inaction) necessary to maintain a § 1983 deliberate indifference claim must be the product of "a voluntary, not accidental," act or omission). Ali fails to meet that burden here.

In sum, the factual allegations contained in the complaint fail to support a plausible claim that the defendants acted with reckless disregard.

C. Ali has failed to state a claim of excessive force.

Plaintiffs in the Second Circuit "face a high threshold for excessive force claims based on tight handcuffs." *Harris v. Nassau Cnty.*, 2016 WL 3023265 (E.D.N.Y. May 23, 2016) (citations omitted) (collecting cases). In evaluating a claim that the defendant's use of handcuffs constituted excessive force, courts in this Circuit consider (1) whether the handcuffs were unreasonably tight; (2) whether the defendants ignored the plaintiff's pleas that the handcuffs were too tight; and (3) the degree to which the plaintiff's wrists were injured. *See Christian v. Kelly*, 2016 WL 3162056 (E.D.N.Y. June 3, 2016) (citing *Dunkelberger v. Dunkelberger*, 2015 WL 5730605, at *14 (S.D.N.Y. Sept. 30, 2015)). To survive a motion to dismiss under these three factors, the complaint must contain factual allegations demonstrating that the plaintiff's handcuffs were unreasonably tight, the defendants ignored the plaintiff's pleas to remove the handcuffs, and that the plaintiff sustained an injury that is "more than merely de minimus." *Id.*; *see also S.B. v. City of N.Y.*, 2016 WL 4530455, at *33-34 (E.D.N.Y. Aug. 29, 2016).

Here, Ali has not alleged sufficient facts showing that the defendants ignored his pleas that his handcuffs were too tight, or that he suffered an injury rising to the level of a constitutional violation under the Fourteenth Amendment.

In the Second Amended Complaint, Ali implausibly alleges (for the first time) that his "pleas were initially ignored by the defendants,"[5] but this newly added allegation runs directly counter to the other facts contained therein, and is not enough to save his claims from dismissal.

The allegations contained in the operative complaint, taken together, demonstrate that

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[5] Ali failed to previously allege that the defendants temporarily ignored his pleas for help. Previously, Ali alleged that the defendants attempted to open the handcuffs after Ali "started to experience significant numbness and tingling in his left wrist," *see* Compl., Mar. 17, 2016, ECF No. 1, ¶¶ 13–14; Am. Compl., July 16, 2016, ECF No. 15, ¶¶ 12–13, but did not allege that he informed defendants he was in pain or that they ignored his complaints.

Ali's pleas of discomfort were not ignored. To the contrary, they show that the defendants acknowledged and responded to Ali's pleas by earnestly attempting to remove his handcuffs, and after the handcuff key jammed in the lock and broke off, that the Fire Department was called to assist them. These allegations simply do not support an excessive force claim. *See, e.g.*, *Case v. City of New York*, 2017 WL 571530, at *6 (S.D.N.Y. Feb. 10, 2017) (dismissing "excessive force claim based on Defendants' use of handcuffs" where "all four Plaintiffs claim that they were handcuffed too tightly," but "fail to allege that they complained about their handcuffs, that Defendants ignored such complaints, and that they suffered injuries caused by the handcuffs"); *Livigni v. Ortega*, 2016 WL 6143351, at *3–4 (S.D.N.Y. Oct. 19, 2016) (finding that the plaintiff failed to plead a "viable handcuffing-related claim of excessive force" where he did not "allege that Defendants ignored a request to loosen the handcuffs"); *Gonzalez v. Hirschman*, 2016 WL 354913, at *4 (S.D.N.Y. Jan. 28, 2016) (rejecting excessive force claim because the plaintiff, among other things, did not allege that that "she asked either officer to loosen her handcuffs or that either officer ignored such pleas").

Ali attempts to minimize the defendants' repeated efforts to remove his handcuffs by insinuating that they conspired to make it *appear* as though they were attempting to remove his handcuffs without any true intention to do so. In a similar vein, Ali suggests that the defendants broke the key in the handcuff's lock intentionally in order to jam it and prolong his suffering, and then resumed pretending to try to help him "for a significant period of time" until Justice Solomon finally called the Fire Department for assistance. *See* Second Am. Compl. ¶ 11.

This baseless conjecture about the defendants' subjective intentions is facially implausible and cannot salvage Ali's claims. Indeed, these conclusory accusations, which rely on Ali's beliefs rather than on any allegations of fact, must fail under the pleading standards set forth in *Iqbal* and *Twombly*. *See, e.g., Webster v. Wells Fargo Bank, N.A.*, 2009 WL 5178654, at

*13 (S.D.N.Y. Dec. 23, 2009), *aff'd sub nom.*, 458 F. App'x 23 (2d Cir. 2012) (holding that plaintiff's allegations fail to state a plausible claim for relief "because they are conclusory and wholly incredible, resting on Plaintiffs' beliefs rather than any allegations of fact").

Ali has also failed to adequately plead facts satisfying the injury requirement. According to Ali, "he was left with permanent injury and continues to suffer from loss of use of his hand." Second Am. Compl. ¶ 13. But Ali's vague reference to a "permanent injury" and conclusory assertion that he has lost the use of his hand is insufficient. While courts in this Circuit have interpreted the injury requirement in handcuff-related excessive force cases to require allegations of a continuing injury, Ali cannot satisfy that requirement by simply reciting the necessary elements. *See Iqbal*, 556 U.S. at 678 ("Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice . . . . In keeping with [this] principle[ ] a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth."); *Twombly*, 550 U.S. at 555 ("[A] formulaic recitation of the elements of a cause of action" are not enough to survive a Rule 12(b)(6) motion to dismiss).

Courts have routinely held that similarly vague and conclusory allegations are not enough to state a viable excessive force claim. *See, e.g.*, *Livigni*, 2016 WL 6143351, at *3–4 (S.D.N.Y. Oct. 19, 2016) (finding the plaintiff's allegations that he suffered "a loss of circulation and that his wrists are 'chronically debilitated," without "any more information about the extent of his alleged injuries," were insufficient to plead a viable excessive force claim); *Harris*, 2016 WL 3023265, at *10–11 (finding the plaintiff's allegations of suffering from "handcuff syndrome" was insufficient to state a claim because, among other things, he failed to "explain what handcuff syndrome is or what specific injuries he suffered as a result."); *Lozada v. City of New York*, 2013 WL 3934998, at *5 (E.D.N.Y. July 29, 2013) (granting motion to dismiss the excessive force claim because the plaintiff's "vague reference to 'injuries'" and a "complaint of a swelled wrist [were] insufficient"); *Corsini v. Bloomberg*, 26 F. Supp. 3d 230, 243 (S.D.N.Y. 2014) (finding the plaintiff's claim that he suffered a "physical injury" from tight handcuffs, without further specifying the injury, to be insufficient to state a claim of excessive force); *Boley v. Durets*, 2013 WL 6562445, at *8–9 (E.D.N.Y. Dec. 10, 2013) (The plaintiff "merely asserts that he suffered 'physical injuries' and "serious permanent personal injuries of body and mind" without specifying the type of injuries. … Plaintiff has not asserted 'any specific or identifiable physical or mental injury and harm beyond a conclusory assertion which, standing alone, is insufficient' to survive a motion to dismiss.") (internal quotation marks and citations omitted).

In sum, Ali has not alleged sufficient facts to support a viable excessive force claim, and his claim should be dismissed.

II. Officer Ramos is Protected by Qualified Immunity

With respect to all of Ali's claims, Officer Ramos is entitled to qualified immunity and cannot be held personally liable. "The doctrine of qualified immunity protects government officials from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 231 (2009) (citation omitted). Ali does not plausibly allege that Officer Ramos violated any rights at all, *see supra* Point I, let alone clearly established rights. The sum and substance of plaintiff's allegations indicate that Officer Ramos acted appropriately and in the scope of his employment at all times, and that any injury plaintiff allegedly sustained was, at worst, the result of an accident to which no fault or liability should be found. Officer Ramos is entitled to qualified immunity and any personal capacity claims should be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).

CONCLUSION

For the reasons set forth above, State Defendant respectfully requests that the Court grants his motion to dismiss the complaint with prejudice in its entirety on his behalf, and for such other and further relief the Court deems just and proper.

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Respectfully submitted,

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